

this amendment, Applicant has cancelled claims 51 and 58, but respectfully requests that claim 45 be considered by the Examiner.

The Examiner first rejected claims 23-28, 33, 36-39 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. (Office Action at 2). Claims 24-25 have been amended and claims 26-28, 33, and 36-39 have been cancelled. With respect to pending claim 23, the Examiner stated that the drawings only show a conventional stationary bicycle pedal assembly. (Office Action at 2). However, the Applicant refers the Examiner to Figure 2, wherein the pedal assembly shown is an assembly conventionally found on non-stationary exercise bicycles as well. And in addition to the drawings, the written specification particularly points out that a conventional non-stationary bicycle pedal mechanism can be used with the present invention. (Spec., p. 7, Ins. 11-13 ("Further, 6A allows for conventional pedal mechanisms (*i.e.*, crankarm and crankset) to be used with a conventional clipless pedal or a regular bicycle pedal and toe clip.")).<sup>1</sup> Therefore, the specification *does* particularly point out that which the applicant regards as his invention and thus the goal of § 112, ¶2 is met: a competitor is reasonably apprised of the scope of the claimed invention so as to be able to avoid infringement. See Athletic Alternatives, Inc. v. Prince Mfg., Inc., 73 F.3d 1573, 1581 (Fed. Cir. 1996).

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<sup>1</sup> References to the specification refer to the substitute specification filed on April 18, 2001 by way of preliminary amendment.

With respect to pending claims 24-27, the Examiner commented that structure for achieving "detachment" has not been claimed. (Office Action at 2). Applicant has cancelled claims 26-27 and has amended claims 24-25 to include structure for "detachment." That amendment does not add new matter as support for it is found in the specification at p. 2, ln. 12; p. 3, ln. 22 – p. 4, ln. 2; p. 4, ln. 16; p. 7, ln. 22. In regard to the Examiner's rejection of claims 28, 33, 36-39, Applicant has cancelled those claims. Applicant submits that the subject matter claimed in pending claims 23-27 (as amended) is fully supported by the written specification, as explained above, and respectfully requests that the § 112 rejection be withdrawn.

The Examiner objected to the drawings for failing to show the means for detaching the pedals and ground support elements. (Office Action at 3). As claims 26-27 have been canceled, the drawings are no longer objectionable on this basis. The Examiner also objected to the drawings for failing to show a cable resistance braking system. (*Id.*). However, claim 30 has also been cancelled.

The Examiner next rejected claims 17-35 and 40 under 35 U.S.C. § 103 as being unpatenable over Aalto in view of McCoy. (Office Action at 3). Applicant has canceled claim 35, has amended independent claims 17 and 40 (which amendment does not add new matter), and respectfully traverses this rejection with respect to the pending claims. The invention claimed in independent claims 17 and 40 is nonobvious over Aalto in view of McCoy for the reasons explained below. In McCoy, the second bar does not extend forwardly, as does applicant's second handle, and there is no motivation or suggestion

to do so.<sup>2</sup> In fact, the McCoy patent specifically teaches that the second or auxiliary bar is designed so that as the "cheeks of the hands rest against bar 1 [the auxiliary bar], the thumbs [are] being passed below said bar A [the main bar]." (McCoy, col. 2, Ins. 62-64)). This position as taught in McCoy enables the rider to grasp the handle bar near the stem while at the same time helping the rider to maintain control and to relieve cramping/fatigue. (*Id.* at 69-74). McCoy attempted to address the following problem in the prior art: if a rider were to grasp the handle bar near the stem to relieve cramping, the rider would have "to pass the thumbs around the stem in order to prevent the hands from slipping" while riding on uneven road and such a grasp does not relieve cramping. (McCoy, col. 1, Ins. 31-43). Thus, to modify the McCoy handlebar so that the auxiliary bar extends forwardly would not enable the rider to grasp the auxiliary bar while at the same time passing his or her thumb below bar A, *i.e.*, would not provide the rider with the control taught by McCoy. A proposed modification that would render the prior art being modified unsatisfactory for its intended purpose, cannot support the basis for motivation or suggestion. See In re Gordon, 733 F.2d 900 (Fed. Cir. 1994). In other words, such a modification as now claimed by the Applicant would render McCoy useless for its intended purpose. Neither can a reference which teaches away from the

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<sup>2</sup> For a proper § 103 rejection, the combination of references must not only disclose or suggest all the limitations of the claimed invention, see generally MPEP §§ 2141.01(a) and 2143, but also there must be some teaching, suggestion, or motivation supporting the combination of references. Monarch Knitting Mach. Corp. v. Sulzer Morat GmbH, 139 F.3d 877 (Fed. Cir. 1998). There must also be some reasonable expectation of success. See generally MPEP § 2143.01. Furthermore, the mere fact that references can be combined or modified does not render the resultant combination obvious: It is not appropriate to modify the content of the prior art reference to achieve the claimed invention, unless there is some suggestion in the reference to do so. See In re Fritch, 972 F.2d 1260 (Fed. Cir. 1992); In re Mills, 916 F.2d 680 (Fed. Cir. 1990).

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claimed combination support an obviousness rejection, as does McCoy. And in view of the fact that it would not have been obvious to alter McCoy in the above fashion, there is likewise no suggestion that the handlebar of Aalto be modified in a manner which would disclose the claimed invention as Aalto is a design patent with no textual explanation for such a modification.

Applicant also notes the Examiner's statement that "[i]t is common knowledge to rotate the handlebars to change their orientation and therefore minimize fatigue and had been done for decade." (Office Action at 4). As such, Applicant requests an affidavit supporting the rejection under 37 C.F.R. § 1.104.

Claims 18-25, 29, 31-32, 34, dependent from claim 17, are nonobvious over the prior art on the same basis as explained above for claim 17.<sup>3</sup>

The Examiner rejected claims 36, 38, 49, and 55 under 35 U.S.C. § 103(a) as being unpatentable over Corwin in view of Aalto and McCoy. (Office Action at 4). Applicant has cancelled those claims.

The Examiner also rejected claims 41, 42, 43, 44, 47, 48, 50, 53, 54, 56, & 57 under 35 U.S.C. § 103 as unpatentable over Corwin in view of Aalto. (Office Action at 5). Applicant has cancelled claims 47-58. With respect to independent claim 41, Applicant submits that the combination of Corwin in view of Aalto does not disclose the claimed invention because Corwin does not show a *singular* diagonal frame element nor does it show a singular diagonal element that includes a mount for a pedal assembly, as

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<sup>3</sup> If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071 (Fed. Cir. 1988). Therefore, if claim 17 is found allowable by the Examiner, then dependent claims 18-25, 29-32, 34 depending therefrom should also be allowable.

recited in independent claim 41. And there is no suggestion or motivation in the art to modify Corwin to include a singular diagonal frame element as disclosed and claimed in the pending application. Accordingly, Applicant submits that the Corwin/Aalto combination simply does not support a rejection under § 103.

Claims 42-44 depend from claim 41 and for the same reasons as explained above for independent claim 41 are nonobvious over the prior art. Furthermore, claim 43 is patentable over Corwin in view of McCoy as explained for independent claim 17 and those claims depending therefrom.

Applicant has also added two new claims 59 and 60 which it submits are supported by the specification and patentably define the invention over the prior art.

#### CONCLUSION

Based on the foregoing, Applicant submits that the claims have been put into allowable form, and requests that this case be passed onto allowance. Should the Examiner believe that the claims are not allowable, the undersigned requests a phone interview in hopes of avoiding the time and expense associated with the appeal process.

Respectfully submitted,

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